

**To:** "Allen, Kaylee" [Kaylee.Allen@sol.doi.gov]; om Hagler/R9/USEPA/US@EPA[]  
**From:** "Monroe, James"  
**Sent:** Thur 9/30/2010 9:49:12 PM  
**Subject:** FW: BDCP Assurances Group bullet points

Just so you can see where things are headed. Also, Tom, could you send me the WRDA language about the Corps' possible role in the BDCP that you mentioned last week? Thanks,

Jim

-----Original Message-----

From: Belin, Letty

Sent: Thursday, September 30, 2010 2:37 PM

To: 'rrcollins@n-h-i.org'; 'crothers@water.ca.gov'; 'CBeale@resourceslawgroup.com'; Nawi, David; 'tgibson@dfg.ca.gov'; 'hcandee@altshulerberzon.com'; 'bobker@bay.org'; 'KDelfino@defenders.org'; 'CFERRARI@dfg.ca.gov'; 'ckoehler@edf.org'; 'mebbin@emslp.com'; 'sskaggs@emslp.com'; 'Ameliam@kcwa.com'; 'lsimonek@mwdh2o.com'; 'RPatterson@mwdh2o.com'; 'lois.schiffer@noaa.gov'; 'melanie.rowland@noaa.gov'; 'Will.Stelle@noaa.gov'; 'pweiland@nossaman.com'; 'rthornton@nossaman.com'; 'aglen@smith-robertson.com'; Gayer, Dave; Monroe, James; Tade, Justin; Allen, Kaylee; Russell, Lisa; Romanik, Peg; Snow, Robert; 'cmanson@westlandswater.org'  
Cc: 'bruce@essexpartnership.com'; 'betsyrieke@me.com'  
Subject: Re: BDCP Assurances Group bullet points

Here for your review are draft bullet points for principals' group consideration:

- \* our goal is to develop mechanisms to provide that federal and state water contractors be granted equivalent "assurances," i.e., that under the BDCP they have equivalent obligations and assurances regarding the consequences flowing from fulfilling their obligations.
- \* water contractors who fulfill their obligations under the BDCP should not lose their "assurances" in the event that government agencies or third parties fail to fund items or carry out actions called for in the plan.
- \* there should be an agreed upon robust collaborative "cure duty" or contingency plan spelling out steps to be taken to address indications that environmental conditions are not improving as anticipated and to avoid jeopardy to listed species and potential permit revocation.

Letty

----- Original Message -----

From: Richard Roos-Collins <rrcollins@n-h-i.org>

To: Crothers, Cathy <crothers@water.ca.gov>; 'Chris Beale' <CBeale@resourceslawgroup.com>; Nawi, David; 'Thomas Gibson' <TGIBSON@dfg.ca.gov>; hcandee@altshulerberzon.com <hcandee@altshulerberzon.com>; bobker@bay.org <bobker@bay.org>; kdelfino@defenders.org <kdelfino@defenders.org>; Chandra Ferrari <CFERRARI@dfg.ca.gov>; ckoehler@edf.org <ckoehler@edf.org>; mebbin@emslp.com <mebbin@emslp.com>; sskaggs@emslp.com <sskaggs@emslp.com>; Belin, Letty; ameliam@kcwa.com <ameliam@kcwa.com>; lsimonek@mwdh2o.com <lsimonek@mwdh2o.com>; RPatterson@mwdh2o.com <RPatterson@mwdh2o.com>; lois.schiffer@noaa.gov <lois.schiffer@noaa.gov>; melanie.rowland@noaa.gov <melanie.rowland@noaa.gov>; will.stelle@noaa.gov <will.stelle@noaa.gov>; pweiland@nossaman.com <pweiland@nossaman.com>; rthornton@nossaman.com <rthornton@nossaman.com>; aglen@smith-robertson.com <aglen@smith-robertson.com>; Gayer, Dave; Monroe, James; Tade, Justin; Allen, Kaylee; Russell, Lisa; Romanik, Peg; Snow, Robert;

cmanson@westlandswater.org <cmanson@westlandswater.org>  
Cc: bruce@essexpartnership.com <bruce@essexpartnership.com>; betsyrieke@me.com <betsyrieke@me.com>  
Sent: Tue Sep 28 00:56:26 2010  
Subject: RE: BDCP Assurances Group conf call Tues 9/28 at 8:00am - 916-574-1223 - Conference Line

All:

Here is the revised KBRA memo. Thanks for your patience. RRC

-----Original Message-----

From: Crothers, Cathy [mailto:crothers@water.ca.gov]  
Sent: Monday, September 27, 2010 6:13 PM  
To: 'Chris Beale'; Richard Roos-Collins; 'Nawi, David'; 'Thomas Gibson'; hcandee@altshulerberzon.com; bobker@bay.org; kdelfino@defenders.org; Chandra Ferrari; ckoehler@edf.org; mebbin@emslp.com; sskaggs@emslp.com; Belin, Letty; ameliham@kcwa.com; lsimonek@mwdh2o.com; RPatterson@mwdh2o.com; lois.schiffer@noaa.gov; melanie.rowland@noaa.gov; will.stelle@noaa.gov; pweiland@nossaman.com; rthornton@nossaman.com; aglen@smith-robertson.com; Gayer, Dave; Monroe, James; Tade, Justin; Allen, Kaylee; Russell, Lisa; Romanik, Peg; Snow, Robert; cmanson@westlandswater.org  
Cc: bruce@essexpartnership.com; betsyrieke@me.com  
Subject: RE: BDCP Assurances Group conf call Tues 9/28 at 8:00am - 916-574-1223 - Conference Line

Hi all,

Attached is the memo from Sean Skaggs with a bullet summary of contractual assurances that could be provided under BDCP to ensure symmetry between sections 7 and 10. We can discuss the at the morning call 916-574-1223 - Conference Line.

Cathy Crothers  
Acting Chief Counsel  
Department of Water Resources  
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-----Original Message-----

From: Chris Beale [mailto:CBeale@resourceslawgroup.com]  
Sent: Monday, September 27, 2010 5:39 PM  
To: Richard Roos-Collins; 'Nawi, David'; Crothers, Cathy; 'Thomas Gibson'; hcandee@altshulerberzon.com; bobker@bay.org; kdelfino@defenders.org; Chandra Ferrari; ckoehler@edf.org; mebbin@emslp.com; sskaggs@emslp.com; Belin, Letty; ameliham@kcwa.com; lsimonek@mwdh2o.com; RPatterson@mwdh2o.com; lois.schiffer@noaa.gov; melanie.rowland@noaa.gov; will.stelle@noaa.gov; pweiland@nossaman.com; rthornton@nossaman.com; aglen@smith-robertson.com; Gayer, Dave; Monroe, James; Tade, Justin; Allen, Kaylee; Russell, Lisa; Romanik, Peg; Snow, Robert; cmanson@westlandswater.org  
Cc: bruce@essexpartnership.com; betsyrieke@me.com

Subject: RE: BDCP Assurances Group conf call Tues 9/28 at 8:00am

All,

Please see attached for a proposed response to question #3. There were very few volunteers to work on question #3, so this has not been widely vetted within our group. Please treat this as a preliminary discussion draft. --Chris

-----Original Message-----

From: Richard Roos-Collins [mailto:rrcollins@n-h-i.org]

Sent: Monday, September 27, 2010 1:47 PM

To: 'Nawi, David'; Crothers, Cathy; 'Thomas Gibson'; hcandee@altshulerberzon.com; bobker@bay.org; kdelfino@defenders.org; Chandra Ferrari; ckoehler@edf.org; mebbin@emslp.com; sskaggs@emslp.com; Belin, Letty; ameliham@kcwa.com; lsimonek@mwdh2o.com; RPatterson@mwdh2o.com; lois.schiffer@noaa.gov; melanie.rowland@noaa.gov; will.stelle@noaa.gov; pweiland@nossaman.com; rthornton@nossaman.com; Chris Beale; aglen@smith-robertson.com; Gayer, Dave; Monroe, James; Tade, Justin; Allen, Kaylee; Russell, Lisa; Romanik, Peg; Snow, Robert; cmanson@westlandswater.org

Cc: bruce@essexpartnership.com; betsyrieke@me.com

Subject: RE: BDCP Assurances Group conf call Tues 9/28 at 8:00am

All:

Here is a shorthand version of the KBRA story on the cure assurance. I will add citations and more detail tonight. Again, you may access the KBRA at <http://www.edsheets.com/Klamathdocs.html>. This memo relies primarily on Sections 3.2.4, 6, and 21.1.3 - 21.1.4. Thanks. RRC

-----Original Message-----

From: Nawi, David [mailto:David\_Nawi@ios.doi.gov]

Sent: Monday, September 27, 2010 11:51 AM

To: Crothers, Cathy; 'Thomas Gibson'; hcandee@altshulerberzon.com; bobker@bay.org; kdelfino@defenders.org; Chandra Ferrari; ckoehler@edf.org; mebbin@emslp.com; sskaggs@emslp.com; Belin, Letty; ameliham@kcwa.com; lsimonek@mwdh2o.com; RPatterson@mwdh2o.com; Richard Roos-Collins; lois.schiffer@noaa.gov; melanie.rowland@noaa.gov; will.stelle@noaa.gov; pweiland@nossaman.com; rthornton@nossaman.com; CBeale@resourceslawgroup.com; aglen@smith-robertson.com; Gayer, Dave; Monroe, James; Tade, Justin; Allen, Kaylee; Russell, Lisa; Romanik, Peg; Snow, Robert; cmanson@westlandswater.org

Cc: bruce@essexpartnership.com; betsyrieke@me.com

Subject: RE: BDCP Assurances Group conf call Tues 9/28 at 8:00am

It would be helpful to have before the call two items we discussed at Friday's meeting: Richard Roos-Collins to provide relevant portions of the Klamath agreement; and Jeff Kightlinger to provide examples of relevant HCPs.

-----Original Message-----

From: Crothers, Cathy [mailto:crothers@water.ca.gov]

Sent: Friday, September 24, 2010 8:05 PM

To: 'Thomas Gibson'; hcandee@altshulerberzon.com; bobker@bay.org; kdelfino@defenders.org; Chandra Ferrari; ckoehler@edf.org; mebbin@emslp.com; sskaggs@emslp.com; Nawi, David; Belin, Letty; ameliham@kcwa.com; lsimonek@mwdh2o.com; RPatterson@mwdh2o.com; rrcollins@n-h-i.org; lois.schiffer@noaa.gov; melanie.rowland@noaa.gov; will.stelle@noaa.gov; pweiland@nossaman.com; rthornton@nossaman.com; CBeale@resourceslawgroup.com; aglen@smith-robertson.com; Gayer, Dave; Monroe, James; Tade, Justin; Allen, Kaylee; Russell, Lisa; Romanik, Peg; Snow, Robert; cmanson@westlandswater.org

Cc: bruce@essexpartnership.com; betsyrieke@me.com

Subject: BDCP Assurances Group conf call Tues 9/28 at 8:00am

Hi all,

The conference call number is 916-574-1223 for Tuesday, Sept. 28 at 8:00-9:00am meeting on assurances. See email below.

As to assignments, Marc Ebbin, Sean Skaggs, Richard Roos-Collins, and perhaps Kim Delfino (Cynthia to check with Kim), will prepare bullet/outline response to items 1 and 2 on the list below, which can be distributed to this group via email prior to 8:00am Tuesday morning.

Tom, Letty, or Jeff, can you clarify who was tasked to cover item 3; were they from DFG and/or MWD?

Thanks,

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-----Original Message-----

From: Thomas Gibson [mailto:TGIBSON@dfg.ca.gov]

Sent: Friday, September 24, 2010 3:03 PM

To: hcandee@altshulerberzon.com; bobker@bay.org; kdelfino@defenders.org; Chandra Ferrari; ckoehler@edf.org; mebbin@emslp.com; sskaggs@emslp.com; David\_Nawi@ios.doi.gov; Letty\_Belin@ios.doi.gov; ameliham@kcwa.com; lsimonek@mwdh2o.com; RPatterson@mwdh2o.com; rrcollins@n-h-i.org; lois.schiffer@noaa.gov; melanie.rowland@noaa.gov; will.stelle@noaa.gov; pweiland@nossaman.com; rthornton@nossaman.com; CBeale@resourceslawgroup.com; aglen@smith-robertson.com; DAVE.GAYER@sol.doi.gov; James.Monroe@sol.doi.gov; Justin.Tade@sol.doi.gov; Kaylee.Allen@sol.doi.gov; Lisa.Russell@sol.doi.gov; PEG.ROMANIK@sol.doi.gov; Robert.Snow@sol.doi.gov; Crothers, Cathy; cmanson@westlandswater.org

Cc: bruce@essexpartnership.com; betsyrieke@me.com

Subject: BDCP Assurances Group

Hello All -

A small group of us, including our co-chairs Jeff and Letty, met over lunch today to refine and prioritize our tasks moving forward, with an emphasis on identifying policy questions that we need to present to the Principals Group for direction next week.

The result of the meeting was the identification of the following three issues, which we need to address in a document to be circulated to the Principals by the close of business on Tuesday.

1. What are our options for achieving symmetry of assurances among federal and state water contractors, DWR and Reclamation under Section 7, Section 10 and the NCCPA?

2. How could a "decision tree" or contingency plan be structured to address and cure a pre-jeopardy situation? Richard has directed our attention to the Klamath Basin Restoration Agreement, which contains an example for

reference.

3. How will the IA address a potential shortfall in funding/inability of the federal or state government to provide funding as contemplated in the plan? What happens if another permittee (e.g., Mirant) does not fund its obligations under the plan?

Could the subgroup that was tasked with coming up with proposed language on yesterday's call instead, for now, focus on preparing a document that addresses these three issues, to be circulated to this group in time for Tuesday morning's call? I would like to take part in (but not lead) this effort.

Please let us know if you have any questions, comments, or concerns. We look forward to discussing these issues with you and hopefully reviewing a draft document on Tuesday morning. Cathy will send around the call-in information later today or Monday.

Tom

-----Original Message-----

From: "Belin, Letty" <Letty\_Belin@ios.doi.gov>  
To: Candee, Hal <hcandee@altshulerberzon.com>  
To: (bobker@bay.org), garybobker <bobker@bay.org>  
To: Delfino, Kim <KDelfino@defenders.org>  
To: Gibson, Thomas <TGIBSON@dfg.ca.gov>  
To: Koehler, Cynthia <ckoehler@edf.org>  
To: Ebbin, Marc <mebbin@emslp.com>  
To: (sskaggs@emslp.com), Sean Skaggs <sskaggs@emslp.com>  
Cc: bruce@essexpartnership.com <bruce@essexpartnership.com>  
To: Nawi, David <David\_Nawi@ios.doi.gov>  
To: Minaberrigarai, Amelia <Ameliam@kcwa.com>  
Cc: (betsyrieke@me.com), betsy rieke <betsyrieke@me.com>  
To: Patterson, Roger K <RPatterson@mwdh2o.com>  
To: Roos-Collins, Richard <rrcollins@n-h-i.org>  
To: lois.schiffer@noaa.gov <lois.schiffer@noaa.gov>  
To: melanie.rowland@noaa.gov <melanie.rowland@noaa.gov>  
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To: aglen@smith-robertson.com <aglen@smith-robertson.com>  
To: Gayer, Dave <DAVE.GAYER@sol.doi.gov>  
To: Monroe, James <James.Monroe@sol.doi.gov>  
To: Tade, Justin <Justin.Tade@sol.doi.gov>  
To: Allen, Kaylee <Kaylee.Allen@sol.doi.gov>  
To: Russell, Lisa <Lisa.Russell@sol.doi.gov>  
To: Romanik, Peg <PEG.ROMANIK@sol.doi.gov>  
To: Snow, Robert <Robert.Snow@sol.doi.gov>  
To: Crothers(crothers@water.ca.gov), Cathy <crothers@water.ca.gov>  
To: cmanson@westlandswater.org <cmanson@westlandswater.org>

Sent: 9/22/2010 9:30:25 PM

Subject: re: bdcg assurances

Following up on our meeting today, here is where we are:

-- please use the above email list for now and/or notify Cathy Crothers about others who should be on the list

-- all of you should have the following:

Ebbin/Skaggs paper  
Birmingham paper on contractors as section 10 permittees  
2004 permit revocation rule  
Richard Roos-Collins email with cite to Klamath assurances documents

--the following people have agreed (or been nominated) to work together to draft an outline of conceptual alternatives for addressing BDCP assurances: Richard Roos-Collins, Kim Delfino, Sean Skaggs, Chris Beale, Allen Glen Smith, Cathy Crothers, Tom Gibson, Craig Manson, Mark Ebbin, Kaylee Allen and Jim Monroe (Kaylee and Jim representing feds for now-- others may join). This outline will note sources for proposals and any other considerations or issues worth noting in this conceptual outline.

Cathy Crothers is organizing this group so notify her if you want to be part of it and have not heard from her.

--Richard provided the following list of assurances issues to be addressed:

- 1) changed circumstances (what do we do in response to them?)
- 2) unforeseen circumstances
- 3) inadequate funding
- 4) new species
- 5) climate change
- 6) third parties
- 7) effectiveness

The group has agreed to produce a written product by next wednesday. We should be prepared to send something around to Betsy and Bruce for circulation to the group and discussion next thursday.

thanks for everyone's help.  
Letty

Letty Belin  
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